

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

U.S.-U.K. ALLIANCE CASE

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Docket OST-01-11029

ANSWER OF
CONTINENTAL AIRLINES, INC.

Communications with respect to this document should be sent to:

Rebecca G. Cox
Vice President, Government Affairs
CONTINENTAL AIRLINES, INC.
1350 I Street, N.W.
Washington, DC 20005

R. Bruce Keiner, Jr.
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595
(202) 624-2615

Hershel I. Kamen
Staff Vice President, International
& Regulatory Affairs
CONTINENTAL AIRLINES, INC.
P.O. Box 4607 – HQSGV
Houston, TX 77210-4607

Counsel for
Continental Airlines, Inc.

December 19, 2002

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United¹ and its European Star Alliance partners bmi, Austrian, Lauda, Lufthansa and SAS (the Star Alliance carriers) have asked the Department to reverse its decision denying their request to continue the tentative approval of their alliance beyond December 31, 2002, despite vast changes in air transportation and the legal framework for negotiations with the U.K. which render the record in this proceeding stale. The Department must deny the Star Alliance carriers' motion absent the "transformative" Open Skies agreement opening up access at London Heathrow sought by the U.S.² and rejected repeatedly by the U.K.

¹ Common names are used for airlines.

² See the September 9, 2002, letter from John R. Byerly to A. T. Baker placed in this docket.

Continental states as follows in opposition to the Star Alliance carriers' motion:

1. The Department's original decisions in this proceeding approved the alliance among the Star Alliance partners at London Heathrow Airport if, and only if, the "United States achieves, within six months from the issue date of this order, an Open Skies agreement with the United Kingdom that meets U.S. aviation policy objectives." (Order 2002-4-4 at 1, 8, 11; Order 2002-6-2 at 1, 2) As the Star Alliance carrier motion effectively concedes, it is clear the U.K. will not agree to any genuine Open Skies agreement by December 31, 2002, and the Department has already denied the Star Alliance carriers request to continue the approval through April 4, 2003. (See Order 2002-10-6) The Star Alliance carriers have presented no basis whatever to believe that the likelihood of such an agreement is any greater during the next six months. After years of failure to negotiate an Open Skies agreement with the U.K., it is clear from history over the last eight months that the prospect of an immunized alliance between United, bmi and the other Star Alliance carriers has created no meaningful incentive to achieve anything like true Open Skies meeting U.S. policy objectives at London Heathrow.

2. The Star Alliance carriers premise their request that the Department waive enforcement of the condition it imposed because "the United States is

continuing to pursue an acceptable agreement with the United Kingdom”³ and the Star Alliance carriers would be forced to re-apply for immunity if an Open Skies agreement between the U.S. and the U.K. were achieved after the deadline established by the Department has passed. The United States has been pursuing open skies at London Heathrow for years, and Star Alliance requests for extensions will prove to be endless if extensions are granted on the basis of U.S. pursuit of Open Skies rather than U.K. acceptance of Open Skies at London Heathrow.

3. The air transportation world has been undergoing a sea change since the Department conditionally approved the United/bmi antitrust immunity request conditioned upon achievement of a U.S.-U.K. Open Skies agreement. United and Lufthansa have announced plans to engage in antitrust-immunized cooperation, including codesharing and revenue pooling, between London Heathrow and the U.S. to exploit Lufthansa’s “far larger sales operations in . . . Britain,”⁴ United has entered bankruptcy and will soon begin codesharing with US Airways throughout the United States, bmi is terminating transatlantic flights instituted as part of its relationship with United, both bmi and British Airways are strengthening their fortresses at London Heathrow and American and British Airways are again seeking to combine their strengths at London Heathrow through extra-bilateral

³ Star Alliance Motion at 1. In their previous motion, the Star Alliance partners noted that the U.S. was continuing to pursue an Open Skies agreement with the U.K., while this motion specifies an “acceptable” agreement.

⁴ “UAL Deal Could Spur Fare Reductions,” Wall Street Journal, December 18, 2002 at D2.

codesharing. Serious doubts about the U.K.'s ability to enter into a new agreement with the U.S. which does not provide London Heathrow-U.S. rights for all carriers based in the European Union have been raised by a European Court of Justice decision, and sorting out the prospects for meaningful U.S.-U.K. Open Skies negotiations could take months if not years. In the rapidly changing aviation world of today, the record on which the Department's conditional approval was based is already stale. In another six months, even more dramatic changes in the aviation industry may well occur. Any further consideration of an antitrust-immunized alliance between United, bmi and their Star Alliance partners at London Heathrow must await a new application submitted when and if an Open Skies agreement meeting U.S. objectives at London Heathrow has been concluded and a new analysis of competition at London Heathrow has been completed.

For the foregoing reasons, Continental urges the Department to deny the Star Alliance carriers motion.

Respectfully submitted,

CROWELL & MORING LLP

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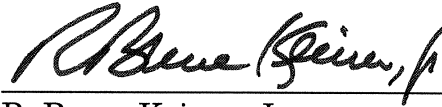
R. Bruce Keiner, Jr.
rbkeiner@crowell.com

Counsel for
Continental Airlines, Inc.

December 19, 2002

CERTIFICATE OF SERVICE

I certify that I have this date served the foregoing document on counsel for the Star Alliance carriers and all parties served with the Star Alliance carriers motion in this proceeding in accordance with the Department's Rules of Practice.

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R. Bruce Keiner, Jr.

December 19, 2002

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SERVICE LIST

Carl B. Nelson, Jr.
Associate General Counsel
American Airlines, Inc.
carl.nelson@aa.com

Rachel B. Trinder
Zuckert, Scoutt & Rasenberger, L.L.P.
(City of Houston)
rbtrinder@zsrlaw.com

Rebecca Lynn Taylor
Leftwich & Douglas, P.L.L.C.
(City of Houston/Greater Houston
Partnership)
rltaylor@ldpllc.com

Edgar N. James
Marie Chopra
James & Hoffman, P.C.
(Allied Pilots Association)
ejames@jamhoff.com
mchopra@jamhoff.com

Don H. Hainbach
Boros & Garofalo, P.C.
(British Airways Plc)
dhainbach@bgairlaw.com

Megan Rae Rosia
Managing Director, Government
Affairs, and Associate General
Counsel
Northwest Airlines, Inc.
megan.rosia@nwa.com

Charles Simpson
Zuckert, Scoutt & Rasenberger, L.L.P.
(Northwest)
cjsimpson@zsrlaw.com

Robert D. Papkin
Squire, Sanders & Dempsey L.L.P.
(bmi british midland)
rpapkin@ssd.com

Robert E. Cohn
Alexander Van der Bellen
Shaw Pittman
(Delta)
robert_cohn@shawpittman.com
alexander_van_der_bellen@shawpittman.com

Donald T. Bliss
O'Melveny & Myers LLP
(US Airways)
dbliss@omm.com

Sheila C. Cheston
Wilmer, Cutler & Pickering
(Lufthansa)
scheston@wilmer.com

Nancy S. Sparks
Senior Attorney, Legal
and Regulatory Affairs
Federal Express Corporation
nssparks@fedex.com

Elliott Seiden
Garfinkle & Wang PLC
(Virgin Atlantic)
elliottseiden@gandwplc.com

Morris R. Garfinkle
CEO and President
Garfinkle & Wang PLC
(Virgin Atlantic)
mogarfinkle@gandwplc.com

Hugh M. Ford
General Manager, Legal
Virgin Atlantic Airways Limited
hugh.m.ford@fly.virgin.com

Bruce H. Rabinovitz
Wilmer, Cutler & Pickering
(United)
brabinovitz@wilmer.com

Michael F. Goldman
Silverberg, Goldman & Bikoff, L.L.P.
(Air France)
(Dallas/Ft. Worth Int'l Airport)
mgoldman@sbgdc.com

Marshall S. Sinick
Squire, Sanders & Dempsey L.L.P.
(Florida West)
msinick@ssd.com

Paul M. Ruden
Senior Vice President-Legal
& Industry Affairs
American Society of Travel Agents, Inc
paulr@astahq.com

Edward P. Faberman
Michelle M. Faust
Ungaretti & Harris
(The Air Carrier Association)
epfaberman@uhlaw.com
mmfaust@uhlaw.com

Roger F. Fones
Chief, Transportation, Energy
& Agriculture Section
Antitrust Division
Department of Justice
roger.fones@usdoj.gov

David S. Stempler
President
Air Travelers Association
david.stempler@verizon.net

John R. Byerly
Deputy Assistant Secretary
for Transportation Affairs
Department of State
byerlyjr@state.gov

Simon Knight
First Secretary (Transport)
British Embassy
simon.knight@washington.mail.fco.gov.uk

Louis C. Cusimano
Deputy Director, AFS-2
Flight Standards Service
Federal Aviation Administration
lou.c.cusimano@faa.gov

U.S. TRANSCOM/TCJ5-AA
Attention: Air Mobility Analysis
508 Scott Drive
Scott AFB, IL 62225-5357
david.bentley@hq.transcom.mil

J.E. Murdock III
Shaw Pittman
sandy.murdock@shawpittman.com

Anita M. Mosner
Eclat Consulting
amosner@eclatconsulting.com

Chip Hallock
President
Regional Business Partnership
Challock@rbp.org

Daryl A. Libow
Sullivan & Cromwell
libowd@sullcrom.com

Nicholas S. Penn
Leftwich & Douglas, P.L.L.C.
(Houston Parties)
ns penn@ldpllc.com

Jon F. Ash
Managing Director
Global Aviation Associates, Ltd.
jfa@ga2online.com

Dennis E. Eckart
President and CEO
Greater Cleveland Growth Association
(Cleveland Parties)
deckart@clevegrowth.com

Professor Darryl Jenkins
Director
The Aviation Institute
The George Washington University
School of Bus. & Public Management
600 21st Street, N.W.
Washington, DC 20052